

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

THE MUTUAL LIFE INSURANCE
COMPANY OF NEW YORK

Claim No. CU-3025

Decision No. CU 3155

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Samuel C. Cantor, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, in the amount of \$50,000.00 in connection with bonds known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against property, including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by

enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Claimant corporation, by an authorized officer, has certified that the claimant was organized in the State of New York, and that at all times between the date of loss and presentation of this claim more than 50% of the outstanding policies of the claimant have been owned by United States nationals. Claimant states that approximately 98% of its policyholders were nationals of the United States and, as a mutual corporation, claimant's policyholders own the "beneficial interest" in its assets. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Pursuant to Cuban law claimant continuously kept on deposit in the General Treasury of the Cuban Government various securities to guarantee its obligations and to qualify for a license to conduct its life insurance business. In 1956, claimant purchased 25 bonds, known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983, for this purpose as a replacement for various other securities. These bonds were in the face amount of \$1,000.00. Each carried coupons 13 through 60 in the amount of \$20.00, payable semiannually. The record contains a copy of a receipt of the Minister of Finance, dated July 10, 1956; and a Certificate of the Treasurer General, dated February 3, 1960, confirming the Government's retention of the bonds purchased in 1956.

The bonds are listed as numbered 56252 through 56266, 56268 through 56271, 56282 through 56284, 56286, and 108156 through 108157.

Based upon all of the evidence of record, the Commission finds that claimant owned and had on deposit in Cuba, as aforesaid, 25 bonds known as 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983. Such bonds, as a debt owed by the Government of Cuba, clearly constitute property within the meaning of the term as defined in Section 502(3) of the Act, quoted above.

This is a different situation than in the Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68. There it was held that the failure to pay interest coupled with sequestration of the bonds was a taking within the meaning of Section 503(a) of the Act. Here the record discloses that the Official Gazette on December 16, 1960 contained a decree that expressly revoked the authority of claimant to conduct business in Cuba. In addition it provided for

"... the seizure of the deposit held as a guarantee (i.e. \$25,000) ... in public bonds to be at the disposition of the Minister of Commerce."

Thus, the taking here occurred on December 16, 1960. By that date there were also two defaulted interest payments (of May 1, and November 1, 1960) of \$40.00 per \$1,000 bond for a total of \$1,000.00.

The Commission therefore finds that the amount of the unpaid indebtedness on claimant's bonds on December 16, 1960, the date of loss, was \$25,000.00 plus the total interest due on December 16, 1960 in the amount of \$1,000.00.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See Claim of Lisle Corporation, Claim No. CU-0644), and it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Six Thousand Dollars (\$26,000.00) with interest thereon at 6% per annum from December 16, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)